

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 14, 2005

D046578 In re Brittney R., a Juvenile

The findings and orders of April 8, 2005 and the findings of June 8, 2005 are reversed. The matter is remanded to the juvenile court with directions to order Agency to make proper inquiry and to comply with the notice provisions of ICWA. Agency can show compliance by proof that the second set of notices were received by the three Cherokee Indian Tribes -- that is, by submitting the requisite proofs of mailing and return receipts for the court's review. If these are not forthcoming, Agency shall renotice the three tribes and submit the notices as well as the requisite proofs of mailing and receipt, and any responses it receives for the court's review. If, after proper inquiry and notice, a tribe claims that Brittney is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no response is received or no tribe claims that Brittney is an Indian child, the court shall reinstate the findings and orders of April 8. Irion, J.; We Concur: McConnell, P.J., Benke, J.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. E. Moore

D046481 In re Terrance B., a Juvenile

Cause called on merits. Nicole Williams, Esq. argued for appellant. Kathryn Bird, Deputy County Counsel argued for respondent. Robert W. Gehring, Esq. argued for the minor, and submitted an additional authority. Cause submitted.

D045340 Anthony v. Snyder

Cause called on merits. David A. Niddrie, Esq. argued for appellant. Miriam Brewster, Deputy County Counsel argued for respondent. Jeffrey A. Chine, Esq. argued for real party in interest-respondent, Barratt American, Inc. Mr. Niddrie replied. Cause submitted.

D046084 National Staff Network et al. v. Workers Compensation Appeals Board

Matter called on merits. Jeffry Paul Rempel, Esq. argued for petitioner. Frederick Joseph Gibbons, Esq. argued for respondent. Mr. Rempel replied. Matter submitted.

D046348 Friese v. Superior Court/Moores et al.

Matter called on merits. R. Paul Yetter, Esq. argued for petitioner. Kathleen M. Sullivan, Esq. argued for real party in interest, Moores. Mr. Yetter replied. Mark C. Mazzaella, Esq. and James Tabb, Esq. were present in oral argument, but did not argue. Matter submitted.

Court recessed at 11:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 14, 2005 (Continued)

D045274 Citizens for Responsible Equitable Environmental Development v. Redevelopment Agency of the City of San Diego et al.

Cause called on merits. Cory Jay Briggs, Esq. argued for appellant. Jenny K. Goodman, Esq. argued for rpi-respondent. Heidi Wierman, Esq. was present in oral argument but did not argue. Mr. Briggs replied. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D044732 Mancinelli v. Siewak et al.

Cause called on merits. Scott A. McMillan, Esq. argued for appellant. No brief was filed by respondent. Cause submitted.

D044493 People v. Marks

Cause called on merits. Mark Alan Hart, Esq. argued for appellant. Annie Featherman Fraser, Deputy Attorney General argued for respondent. Mr. Hart replied. Cause submitted.

D046553 In re Maya K., a Juvenile

Cause called on merits. Kathleen M. Mallinger, Esq. argued for appellant. Kathryn Bird, Deputy County Counsel argued for respondent. Julie E. Braden, Esq. argued for the minor. Ms. Mallinger replied. Cause submitted.

D044348 Martinez et al. v. Fire Insurance Exchange

Cause called on merits. Neal H. Rockwood, Esq. argued for appellant. David M. Axelrad, Esq. argued for respondent. C. Brant Noziska, Esq. replied for appellant. Cause submitted.

D045667 Lamb v. Scripps Clinic et al.

Cause called on merits. Scott Patterson, Esq. argued for appellant. Gino A. Patrizio, Esq. argued for respondent. Robert Heft, Esq. replied for appellant. Cause submitted.

D045557 Bivens v. Gallery Corporation

Cause called on merits. Scott A. McMillan, Esq. argued for appellant. Steven Dale Allison, Esq. argued for respondent. Mr. McMillan replied. Cause submitted.

Court recessed at 4 p.m. until Tuesday, November 15, 2005 at 9 a.m.

D047215 In re Wise on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 15, 2005

D045994 Frost v. Quiring

The order is affirmed. McConnell, P.J.; We Concur: Haller, J., Irion, J.

D045754 In re Eric P., a Juvenile

The juvenile court's order that the true findings Eric committed two counts of misdemeanor assault with a deadly weapon is affirmed. Nares, Acting P.J.; I concur: Haller, J., I dissent: McDonald, J.

D047136 In re Tian L., a Juvenile

The petition is dismissed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

D045689 The People v. Verdin

The probation order is modified to stay the imposition of the restitution fine. The superior court is directed to amend the probation order accordingly. In all other respects the judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Aaron, J.

D047368 Hilton Hotels Corporation v. Superior Court of San Diego County/Cohen

The petition is denied.

D047292 Karlina E. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Karlina E. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047289 Peter D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Peter D. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047132 Christopher T. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

D047135 Lydia S. et al., v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed for Jerome S. The notice of intent is deemed to be abandoned. The case is dismissed.

D046362 Canyon Capital Marketing, Inc. v. Corporate Stock Transfer, Inc.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 15, 2005 (Continued)

D047150 Carvajal v Southwest Marine, Inc.

Pursuant to California Rules of Court, rule 8, the appeal filed September 13, 2005, is dismissed for appellant's failure to timely designate the record. (Cal. Rules of Court, rules 4(a) and 5(a)).

D046761 People v. Arms

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. Moore

D044792 Christie v. City of El Centro et al.

Cause called on merits. Gabriel Hedrick, Esq. argued for appellant. John P. McCormick, Esq. was present in oral argument for appellant, but did not argue. Terry Singleton, Esq. argued for respondent. Mr. Hedrick replied. Cause submitted.

D044603 People v. Castro

Cause called on merits. Lynelle K. Hee, Esq. argued for appellant. Barry Carlton, Deputy Attorney General argued for respondent. Ms. Hee replied. Cause submitted.

D044723 TDY Industries, Inc. v. San Diego Unified Port District

Cause called on merits. John Robert Reese, Esq. argued for appellant. Douglas M. Butz, Esq. argued for respondent. Mr. Reese replied. Cause submitted.

Court recessed at 10:19 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D045465 Darulis v. Department of Motor Vehicles

Cause called on merits. Martin W. Hagan, Deputy Attorney General argued for respondent. Mark Darulis, argued for appellant in pro per. Cause submitted.

D044724 Davis et al. v. Farmers Insurance Group et al.

Cause called on merits. Jason R. Litt, Esq. argued for respondent. John K. Saur, Esq. argued for appellant. Cause submitted.

D044363 Daly v. Ramseyer

Cause called on merits. Errol Daly, argued for appellant in pro per. David B. Kuhlman, Esq. argued for respondent. Mr. Daly replied. Cause submitted.

Court recessed at 11 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 15, 2005 (Continued)

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. Moore

D045218 Berglund v. Arthroscopic & Laser Surgery

Cause called on merits. John Morris, Esq. argued for appellant. Marc O. Stern, Esq. argued for respondent. Mr. Morris replied. Cause submitted.

Court recessed at 2:22 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D045153 Department of Transportation v. Hall

Cause called on merits. Jeffrey A. Joseph, Esq. argued for appellant. Jon R. Williams, Esq. argued for respondent. Mr. Joseph replied. Cause submitted.

D045813 In re Anthony M., a Juvenile

D046675 In re Anthony M. on Habeas Corpus

Matter called on merits. (habeas argument) Kathleen M. Mallinger, Esq. argued for petitioner. Gary Seiser, Deputy County Counsel argued for respondent. Ms. Mallinger replied.
(appeal argument) Christopher R. Booth, Esq. argued for appellant. Kathleen M. Mallinger, Esq. argued for respondent, Anthony M. Gary Seiser, Esq. argued for the County. Mr. Booth replied. Ms. Mallinger replied. Cause submitted.

D045487 Smith v. Wells Fargo Bank

Cause called on merits. Mark L. Knutson, Esq. was present in oral argument for appellant, but did not argue. Howard D. Finkelstein, Esq. argued for appellant. Daniel G. Lamb, Esq. argued for respondent. Mr. Finkelstein replied. Cause submitted.

D044881 Western Light Source, Inc. v. Brookwood Kearny Mesa Investors, LLC. et al.

Cause called on merits. Matthew Perry Tyson, Esq. argued for appellant. Jeffry A. Miller, Esq. argued for respondent. Mr. Tyson replied. Cause submitted.

D044663 Ramona Unified School District v. Tsiknas et al.

Cause called on merits. David Estes, Esq. argued for appellant. James J. Moneer, Esq. argued for respondent. Mr. Estes replied. Cause submitted.

Court recessed at 4 p.m. until Wednesday, November 16, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 16, 2005

D043307 Gandy v. Asplundh Tree Expert Co.

The petitions for rehearing are denied.

D045014 County of San Diego v. Harko National Insurance Company

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Aaron, J.

D043307 Gandy v. Asplundh Tree Expert Co.

The order granting JNOV is reversed. The original judgment is reversed as to the amount of damages and the matter is remanded solely for retrial of that issue. In all other respects, the original judgment is affirmed. Upon remand, the trial court is directed to enter a new judgment incorporating the jury's original finding regarding liability and the new damages award, which shall be trebled. Each party is to bear its own costs on appeal. This modification changes the judgment. McConnell, P.J.

D047323 Sikand et al. v. Superior Court of San Diego County/City of Poway et al.

Let a peremptory writ of mandate issue directing the superior court to vacate its order of October 3, 2005, and enter an order granting the challenge. The parties shall bear their own costs in the writ proceedings. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 24(b)(3)).

D046999 In re the marriage of Miller

The appellant has failed to timely pay the filing fee and failed to timely designate the record on appeal filed on October 4, 2005, after being notified by the Clerk of the Court. (California Rules of Court, rules 1(b), 1(c)(2), & 5(a); all rule references are to the California Rules of Court). The appeal filed on October 4, 2005, is dismissed. (Rules 1(c)(5) & 8(a)(1)).

D047186 Marmon v. The Superior Court of San Diego County/Bergsma

The petition is denied.

D047336 Van Hook v. The Superior Court of San Diego County/Sanford

The petition is denied. The stay issued October 28, 2005 is vacated.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D044776 Anticancer, Inc. v. Novartis Corporation et al.

Cause called on merits. Joseph Clement Kracht, Esq. argued for appellant. John P. Cooley, Esq. argued for respondent. Mr. Kracht replied. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 16, 2005 (Continued)

D045250 Green v. Boehrig

Cause called on merits. Kenneth E. Lange, Esq. argued for appellant. Robert A. Alexander, Jr., Esq. argued for respondent. Mr. Lange replied. Cause submitted.

D045938 Bonita Country Day School et al. v. Fleeson

Cause called on merits. Jon Miller, Esq. argued for appellant. Scott A. Johnson, Esq. was present in oral argument for appellant, but did not argue. Alexander Paul Zarcone, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D044963 Rauber et al. v. Armstrong et al.

Cause called on merits. Richard E. McCarthy, Esq. argued for appellant/cross-respondent. Peter C. Ward, Esq. argued for respondent/cross-appellant. Mr. McCarthy replied. Mr. Ward replied. Cause submitted.

Court recessed at 11:16 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion
Clerk: D. Moore

D044839 People v. Davidson

Cause called on merits. Jerome P. Wallingford, Esq. argued for appellant. David Songco, Deputy Attorney General argued for respondent. Mr. Wallingford replied. Cause submitted.

D045375 McMeans v. City of Escondido

Cause called on merits. Gregory M. Garrison, Esq. argued for appellant. Mark Waggoner, Esq. argued for respondent. Susan Ryan, Esq. was present in oral argument for respondent, but did not argue. Mr. Garrison replied. Cause submitted.

Court recessed at 2:41 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

D045568 Privacy Rights Clearinghouse et al. v. Jetblue Airways Corporation et al.

Cause called on merits. John William Hanson, Esq. argued for appellant. Paul Marks, Esq. argued for respondent, Jetblue Airways Corporation. Lisa M. Wong, Esq. argued for respondent, SRS Technologies. Mr. Hanson replied. Cause submitted.

Court recessed at 3:06 p.m. until Thursday, November 17, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 16, 2005 (Continued)

D044849 Daniels et al. v. San Diego Grand Prix Association

The request for publication of the opinion is denied.

D047209 In re Ermert on Habeas Corpus

The petition is denied.

D046539 People v. Roberts

Appellant has failed to file an opening brief within 30 days after notice under California Rules of Court, rules 33(c)(5) and 17. The appeal is dismissed.

D046677 Thorworth v. Nugent & Newnham, APC et al.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 17, 2005

D045849 People v. Medrano

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Haller, J.

D047330 McClenty v. U.S. Army Department, FT Lewis, WA et al.

The matter having been considered by Justices McConnell, Haller and O'Rourke, plaintiff Booker McClenty's appeal from the notice of removal to federal court filed by defendant on November 22, 2004 and the federal court's order of September 12, 2005 dismissing plaintiff's action for want of prosecution is dismissed on the grounds a notice of removal is not a court order and thus is not a subject to appeal, and this court lacks jurisdiction to review a federal court order.

D045833 People v. Lightfoot

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D044363 Daly v. Graig Ramseyer et al.

The judgment is reversed and the matter is remanded with direction to overrule the demurrer and deny the motion to strike except as to the first cause of action. The order denying Daly's motion to change venue is affirmed. Daly is entitled to his costs on appeal. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

D046777 In re Joanna R., a Juvenile

The judgment is affirmed. Nares, Acting P.J.; We Concur: Aaron, J., Irion, J.

D046609 In re Wayne H. on Habeas Corpus

D046216 In re C.C., a Juvenile

The petition for writ of habeas corpus, In re Wayne H., D046609, is consolidated with the appeal In re C.C., D046216, for disposition.

D046609 In re Wayne H. on Habeas Corpus

D046216 In re C.C., a Juvenile

The judgment and order are affirmed. The petition is denied. O'Rourke, J.; We Concur: Nares, Acting P.J., and Aaron, J.

D047194 In re Ramsey on Habeas Corpus

The petition is denied.

D047444 Holloway v. Superior Court of San Diego County/People

The petition is denied.

D047216 Turnour v. Nagle et al.

The appeal filed by Dennis and Dan Nagle on September 26, 2005, is dismissed for appellants' failure to designate the record (Cal. Rules of Court, rules 4(a) and 5(a)).

D047515 State of California et al. v. Superior Court of San Diego County/County of San Diego

The petition is denied. Petitioners have an adequate remedy by way of appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 17, 2005 (Continued)

D046548 People v. Allen

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

D044830 People v. Pitzer

Cause called on merits. Patricia J. Ulibarri, Esq. argued for appellant. Adrienne S. Denault, Deputy Attorney General argued for respondent. Ms. Ulibarri replied. Cause submitted.

D044666) Gutierrez v. Nick Pecoraro Painting & Decorating, Inc.

D044675) Irwin et al. v. Nick Pecoraro Painting & Decorating, Inc.

Cause called on merits. Mark T. Bennett, Esq. argued for appellant. Theodore Franklin, Esq. argued for respondent, telephonically. Mr. Bennett replied. Cause submitted.

Court recessed at 9:42 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D046093 Gillmann v. Douzджian et al.

Cause called on merits. Robert M. Steele, Esq. argued for appellant. Matthew Smith, Esq. argued for respondent, Cartwright. Herb Fox, Esq. argued for respondent, Douzджian. Mr. Steele replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron
Clerk: D. Moore

D044619) Godding et al. v. Defense Web Technologies Inc., et al.

D045434) Godding et al. v. Defense Web Technologies Inc., et al.

Cause called on merits. Gregory P. Goonan, Esq. argued for appellant. Craig E. Hunsaker, Esq. argued for respondent. Mr. Goonan replied. Cause submitted.

Court recessed at 1:57 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 17, 2005 (Continued)

D045693 Huberman et al. v. Lutz et al.

Cause called on merits. James Mangione, Esq. argued for appellant. Donald Merkin, Esq. argued for respondent. Cause submitted.

D045520 U. S. Bank National Association v. Holmer

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Charles Bird, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

Court recessed at 2:45 p.m. until Friday, November 18, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 18, 2005

D044724 Davis et al. v. Farmers Insurance Group

The judgment is affirmed. Respondent is entitled to its cost on appeal. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

D046383 People v. Pollard

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Irion, J.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. Moore

D045900 People v. Nguyen

Cause called on merits. Robert Francis McLaughlin, Esq. argued for appellant. Summer Smith, Certified Law Student argued for respondent. Mr. McLaughlin replied. Cause submitted.

D045555 People v. Innovative Financial Services Inc., et al.

Cause called on merits. Ken Sobel, Esq. argued for appellant. James K. Openshaw, Esq. argued for respondent. Lindsay B. Herrick, Esq. was present in oral argument, but did not argue. Mr. Sobel replied. Cause submitted.

Court recessed at 10 a.m. until Monday, November 21, 2005 at 10 a.m.

D045645 Darulis v. Department of Motor Vehicles

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., McDonald, J.

D044732 Mancinelli v. Siewak et al.

Judgment affirmed. Haller, J.; We Concur: Huffman, Acting P.J., Irion, J.

D047200 In re the Marriage of Revani and Mohammadian

Pursuant to California Rules of Court, rule 8, the appeal filed September 12, 2005 is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rule 4(b) and 5(c)).

D047221 In re Haynes on Habeas Corpus

The petition is denied.

D047211 In re Kurbegovich on Habeas Corpus

The petition is denied.